

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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Telephone Number:

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Date:

June 05, 2007

Legend:

Seller =

Buyer =

Plant =

Seller's Parent =

State A =

State Commission =

Location =

Intermediate 1 =

Intermediate 2 =

Buyer's Parent =

Ultimate Parent =

State B =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to your letter dated January 16, 2007, requesting a private letter ruling concerning the tax consequences of the sale by Seller to Buyer of Plant and

associated assets, including the liability to decommission Plant. Specifically, you have requested rulings regarding the tax consequences under section 468A of the Internal Revenue Code to Seller's qualified nuclear decommissioning fund.

Seller and Buyer, in a jointly-filed ruling request, have represented the following facts and information relating to the ruling request:

Seller, a State A corporation, is an electric public utility subject to regulation by the State Commission, the Federal Energy Regulatory Commission, and, as the owner of the Plant, the Nuclear Regulatory Commission ("NRC"). Seller is a wholly-owned subsidiary of Seller's Parent, a public utility holding company. Seller joins in the consolidated Federal income tax return filed by Seller's Parent for the affiliated group.

Seller owns a a percent interest in Plant which is located in Location and consists of two pressurized light water reactors (units) and associated electric generation equipment. Seller's licenses to operate the units of Plant previously were scheduled to expire in b and c; however, the NRC recently extended the operating licenses until d and e, respectively.

Seller has established, with respect to the decommissioning of each unit of Plant, a nuclear decommissioning trust fund (together, "Seller's Qualified Nuclear Decommissioning Funds") that satisfies the requirements to be treated as a "nuclear decommissioning reserve fund" within the meaning of section 468A(a) and section 1.468A-5 of the Income Tax regulations. Seller also maintains, with respect to the decommissioning of each unit of Plant, two additional nuclear decommissioning trust funds ("Seller's Nonqualified Nuclear Decommissioning Funds" and "Seller's Prior Collections Funds"), neither of which meet the requirements of § 468A(a) and § 1.468A-5.

Buyer is a State A limited liability company and is a direct, wholly-owned subsidiary of Intermediate 1. Intermediate 1 is a direct, wholly-owned subsidiary of Intermediate 2, which is, in turn, a direct, wholly-owned subsidiary of Buyer's Parent. Buyer's Parent is a direct, wholly-owned subsidiary of Ultimate Parent, a public utility holding company incorporated in State B. Buyer, Intermediate 1, and Intermediate 2 are disregarded entities for Federal income tax purposes.

On f, Seller and Buyer (collectively, the "Parties") entered into an asset sale agreement ("ASA") pursuant to which Buyer agreed to purchase from Seller all of Seller's ownership interest in Plant for \$g, subject to various adjustments described in the ASA. The ASA provides that, upon the closing of the transaction ("Closing"), Seller

will transfer all of the assets constituting or necessary to operate Plant, as well as all or a portion of the assets of the Seller's Qualified Nuclear Decommissioning Funds, in exchange for the Purchase Price plus Buyer's assumption of certain liabilities and obligations, including Seller's obligation to decommission Plant.

In addition, at closing, Seller will transfer from Seller's Qualified Nuclear Decommissioning Funds to the Buyer's Qualified Nuclear Decommissioning Funds assets in an amount equal to the Decommissioning Target. The Decommissioning Target is defined as the greater of several specified amounts, including the amount specified in this private letter ruling.

State Commission will determine the disposition of any assets in Seller's Qualified Nuclear Decommissioning Fund in excess of the Decommissioning Target as of the Closing (the "Excess Qualified Assets").

The agreement between Parties allows for the transfer of only a portion of the assets of Seller's Qualified Nuclear Decommissioning Funds to Buyer's Qualified Nuclear Decommissioning Funds in the event that the Decommissioning Target is less than the entire amount of the assets held in Seller's Qualified Nuclear Decommissioning Funds. To that end, the Parties agreed to request from the Service the rulings discussed below.

Requested Rulings

- 1. The Service will exercise its discretion pursuant to section 1.468A-6(g)(1) to treat the transfers at Closing of the Decommissioning Target assets but not the Excess Qualified Assets, if any, from Seller's Qualified Nuclear Decommissioning Funds to Buyer's Qualified Nuclear Decommissioning Funds as dispositions that satisfy the requirements of section 1.468A-6(b).*
- 2. The Seller, the Buyer, and their respective Qualified Nuclear Decommissioning Funds will not recognize gain or loss or otherwise take into account any income or deduction by reason of the asset transfers from Seller's Qualified Nuclear Decommissioning Funds to Buyer's Qualified Nuclear Decommissioning Funds, except to the extent incurred as a result of the pre-Closing liquidation of assets to pay fees and expenses of Seller's Qualified Nuclear Decommissioning Funds attributable to periods prior to Closing.*
- 3. Immediately following the transfers described in Ruling Number 1 from Seller's Qualified Nuclear Decommissioning Funds to Buyer's Qualified Nuclear Decommissioning Funds, Buyer's Qualified Nuclear Decommissioning Funds will be treated as satisfying the requirements of section 468A.*

4. *Immediately following the transfers described in Ruling Number 1 from Seller's Qualified Nuclear Decommissioning Funds to Buyer's Qualified Nuclear*

Decommissioning Funds, Buyer's Qualified Nuclear Decommissioning Funds will have a carryover tax basis in the transferred assets.

5. *Immediately upon Closing, the Service will exercise its discretion under section 1.468A-5(c)(1)(i) to disqualify the Seller's Qualified Nuclear Decommissioning Funds to the extent of any Excess Qualified Assets.*

6. *Upon such disqualification and pursuant to section 1.468A-5(c)(3), Seller's Qualified Nuclear Decommissioning Funds will be treated as disposing of the Excess Qualified Assets at fair market value.*

7. *Upon such disqualification and pursuant to section 1.468A-5(b)(2)(iii), the withdrawals by Seller of Excess Qualified Assets (net of taxes paid by the now-disqualified funds) will not constitute acts of "self-dealing" as defined in section 1.468A-5(b)(2) and Seller will not be subject to the excise tax under section 4951 or other penalties as a result of such withdrawals.*

LAW AND ANALYSIS

Section 468A(a) of the Code provides that a taxpayer may elect to deduct payments made to a nuclear decommissioning reserve fund that meets the requirements of section 468A (i.e. a fund that is a "qualified nuclear decommissioning fund").

Section 1.468A-1(b)(3) provides that a "qualified nuclear decommissioning fund" is a fund that satisfies the requirements of section 1.468A-5, and a "nonqualified nuclear decommissioning fund" is a fund that does not satisfy those requirements.

Section 1.468A-5(a) sets out the qualification requirements for a qualified nuclear decommissioning fund. It provides, in part, that a qualified nuclear decommissioning fund must be established and maintained pursuant to an arrangement that qualifies as a trust under state law.

Section 1.468A-5(a)(1)(i) provides that a qualified nuclear decommissioning fund must be established exclusively for the purpose of funding the cost associated with decommissioning one or more nuclear facilities.

Section 1.468A-5(a)(1)(iii) provides that an electing taxpayer can establish and maintain only one qualified nuclear decommissioning fund for each nuclear power plant.

Section 1.468A-5(a)(2) provides that a qualified nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under section 468A(a) and section 1.468A-2(a).

Section 1.468A-5(a)(3) provides that the assets of a qualified nuclear decommissioning fund are to be used exclusively (A) to satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear plant to which the fund relates, (B) to pay administrative and other incidental costs of the trust fund, and (C) to the extent not currently required for the purposes described in (A) and (B) above, to make investments.

Section 1.468A-5(b)(1) provides that, except as otherwise provided in section 1.468A-5(b), the excise taxes imposed by section 4951 shall apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

Section 1.468A-5(b)(2)(iii) provides an exception from the general rule that, for purposes of section 1.468A-5(b), the term "self-dealing" means any act described in section 4951(d), for a withdrawal by the electing taxpayer of amounts that have been treated as distributed under section 1.468A-5(c)(3).

Section 1.468A-5(c)(1)(i) provides that if at any time during the taxable year a qualified nuclear decommissioning fund does not satisfy a requirement of section 1.468A-5(a), the Service may, in its discretion, disqualify all or a portion of the fund as of the date that the fund does not satisfy such requirements.

Section 1.468A-5(c)(3) provides that, if all or any portion of a qualified nuclear decommissioning fund is disqualified under section 1.468A-5(c)(1), the portion of the qualified nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of the disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the qualified nuclear decommissioning fund. In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the product of the fair market value of the assets of the fund determined as of the date of disqualification (reduced by certain amounts including any tax that is (1) imposed on the income of the fund, (2) is attributable to income taken into account before the date of the disqualification or as a result of the disqualification, and (3) has not been paid as of the date of the disqualification) and the fraction of the qualified nuclear decommissioning fund that was disqualified under section 1.468A-5(c)(1).

Section 1.468A-6(b) provides that section 1.468A-6 applies if, immediately before the disposition, the transferor maintained a qualified nuclear decommissioning fund with respect to the interest disposed of, and immediately after the disposition, either a proportionate amount (which could include all) of the assets of the transferor's fund is transferred to a qualified nuclear decommissioning fund of the transferee, or the transferor's entire fund is transferred to the transferee, provided in the latter case (or if the transferee receives all of the assets in the transferor's fund, but not the transferor's fund) that the transferor's entire qualifying interest in the plant; and the transferee continues to satisfy the requirements of section 1.468A-5(a)(iii), which permits an electing taxpayer to maintain only one qualified nuclear decommissioning fund for each plant.

Section 1.468A-6(g)(1) provides that upon request of an electing taxpayer, the Service may treat a disposition occurring on or after December 27, 1994, as satisfying the requirements of section 1.468A-6 if the Service determines that this treatment is necessary or appropriate to carry out the provisions of section 468A and the regulations thereunder.

In connection with the transfer of Seller's entire interest in the Plant, a transfer of less than one-hundred percent of the assets of Seller's Qualified Nuclear Decommissioning Funds to a fund denominated as Buyer's Qualified Nuclear Decommissioning Funds is inconsistent with the purposes of section 468A and the regulations thereunder. Accordingly, under such circumstances the Service will exercise its discretion to disqualify the Seller's Qualified Decommissioning Fund in its entirety upon the transfers at Closing of less than one-hundred percent of the assets of Seller's Qualified Nuclear Decommissioning Funds to a fund denominated as Buyer's Qualified Nuclear Decommissioning Fund (disregarding any pre-Closing liquidation of assets to pay fees and expenses of Seller's Qualified Nuclear Decommissioning Funds attributable to periods prior to Closing).

Therefore, if less than one-hundred percent of the assets of the Seller's Qualified Nuclear Decommissioning Fund is transferred to a fund denominated as Buyer's Qualified Nuclear Decommissioning Fund (disregarding any pre-Closing liquidation of assets to pay fees and expenses of Seller's Qualified Nuclear Decommissioning Funds attributable to periods prior to Closing) we hold as follows:

1. Pursuant to the authority granted under section 1.468A-5(c)(1), the Service will exercise its discretion to disqualify the Seller's Qualified Decommissioning Fund in its entirety upon the transfers at Closing of less than one-hundred percent of the assets of Seller's Qualified Nuclear Decommissioning Funds to a fund denominated as Buyer's Qualified Nuclear Decommissioning Fund (disregarding any pre-Closing liquidation of

assets to pay fees and expenses of Seller's Qualified Nuclear Decommissioning Funds attributable to periods prior to Closing).

2. The assets of Seller's Qualified Nuclear Decommissioning Funds transferred to a fund denominated as Buyer's Qualified Nuclear Decommissioning Funds and any Excess Qualified Assets are deemed to be distributed to Seller on the date of the Closing. This deemed distribution is treated for purposes of section 1001 as a disposition of property held by the Seller's Qualified Nuclear Decommissioning Fund. The Seller must include in its gross income for the taxable year that includes the date of the Closing an amount equal to the fair market value of the assets of Seller's Qualified

Nuclear Decommissioning Fund determined as of the Closing (reduced by certain amounts including any tax that is imposed on the income of the fund, is attributable to income taken into account before the date of the disqualification or as a result of the disqualification, and has not been paid as of the Closing). Seller will take a fair market value basis in the assets deemed distributed.

3. If any amount from Seller's Qualified Nuclear Decommissioning Funds is transferred to a fund denominated as Buyer's Qualified Nuclear Decommissioning Funds, the Service will exercise its discretion under section 1.468A-5(c)(1)(i) to disqualify the fund denominated as Buyer's Qualified Nuclear Decommissioning Fund. Thus, Buyer's Qualified Nuclear Decommissioning Funds will not be treated as satisfying the requirements of section 468A.

4. The attempted transfer of less than one-hundred percent of Seller's Qualified Nuclear Decommissioning Funds to a fund denominated as Buyer's Qualified Nuclear Decommissioning Fund results in a disqualification of the Seller's entire Fund. When these funds are transferred to the Buyer, the Buyer is not permitted to contribute the entire amount to a qualified nuclear decommissioning fund. Therefore, there are no transferred assets to have a carryover basis and requested ruling number 4 is moot.

5-6. Since an attempted transfer of less than one-hundred percent of the assets from Seller's Qualified Nuclear Decommissioning Fund to a fund denominated as the Buyer's Qualified Nuclear Decommissioning Fund results in a disqualification of Seller's entire Fund, requested rulings 5 and 6 are moot.

7. The disqualification and deemed distribution will not constitute acts of "self-dealing" as defined in section 1.468A-5(b)(2) and Seller will not be subject to the excise tax under section 4951 or other penalties as a result of the disqualification.

If, and only if, one-hundred percent of the assets held in Seller's Qualified Nuclear Decommissioning Fund on the date of the Closing are transferred to Buyer's

Qualified Nuclear Decommissioning Fund (except to the extent of any pre-Closing liquidation of assets to pay fees and expenses of Seller's Qualified Nuclear Decommissioning Funds attributable to periods prior to Closing), with no Excess Qualified Assets retained, we hold as follows:

1. The transfers at Closing of all of the assets of the Seller's Qualified Nuclear Decommissioning Fund to the Buyer's Qualified Nuclear Decommissioning Fund satisfy the requirements of section 1.468A-6(b).

2. The Seller, the Buyer, and their respective Qualified Nuclear Decommissioning Funds will not recognize gain or loss or otherwise take into account any income or deduction by reason of the asset transfers from Seller's Qualified Nuclear

Decommissioning Funds to Buyer's Qualified Nuclear Decommissioning Funds, except to the extent incurred as a result of the pre-Closing liquidation of assets to pay fees and expenses of Seller's Qualified Nuclear Decommissioning Funds attributable to periods prior to Closing.

3. Immediately following the transfer of one-hundred percent of the assets held in Seller's Qualified Nuclear Decommissioning Fund to Buyer's Qualified Nuclear Decommissioning Fund (except to the extent of any pre-Closing liquidation of assets to pay fees and expenses of Seller's Qualified Nuclear Decommissioning Funds attributable to periods prior to Closing), with no Excess Qualified Assets retained, the Buyer's Qualified Nuclear Decommissioning Funds will be treated as satisfying the requirements of section 468A.

4. Immediately following the transfer of one-hundred percent of the assets held in Seller's Qualified Nuclear Decommissioning Fund to Buyer's Qualified Nuclear Decommissioning Fund (except to the extent of any pre-Closing liquidation of assets to pay fees and expenses of Seller's Qualified Nuclear Decommissioning Funds attributable to periods prior to Closing), with no Excess Qualified Assets retained, the Buyer's Qualified Nuclear Decommissioning Funds will have a carryover tax basis in the transferred assets.

5-7. Since Seller has transferred one-hundred percent of the assets held in Seller's Qualified Nuclear Decommissioning Fund to Buyer's Qualified Nuclear Decommissioning Fund, requested rulings 5, 6, and 7 are moot.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the

material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent.

Effective January 1, 2006, amendments were made to § 468A by the Energy Tax Incentives Act of 2005, Pub. L. 109-58, 119 Stat. 594. Regulations based on these amendments are being developed but have not yet been proposed. This ruling may be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2006-1, 2006-1 I.R.B. 1, 49. However, when the criteria in section 11.05

of Rev. Proc. 2006-1, 2006-1 I.R.B. 49 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

In accordance with powers of attorney on file with this office, we are sending copies of this ruling to both Buyer and Seller (or their authorized representatives). We are also sending a copy of this letter ruling to the Industry Director, Natural Resources (LM:NR).

Sincerely yours,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)